

AMENDED IN ASSEMBLY MAY 25, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 523**

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**Introduced by Assembly Member De La Torre**

February 21, 2007

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An act to add Sections 10506.7.5 and 10506.7.6 to, and to add Article 1.6 (commencing with Section 10507.1) to Chapter 2.1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 523, as amended, De La Torre. Contracts: University of California.

Existing law authorizes the Regents of the University of California to enter into contracts for the erection, construction, alteration, repair, or improvement of a university structure, as specified.

This bill would provide for specified procedures when a contractor, as defined, files a change order with the Regents of the University of California pursuant to an existing contract. The bill also would provide for specified procedures allowing arbitration between the Regents of the University of California and contractors.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10506.7.5 is added to the Public Contract
- 2 Code, to read:
- 3 10506.7.5. (a) The university may, without affecting the
- 4 validity of the best value contract, order changes, modifications,

1 deletions, and extra work pursuant to a written proposed change  
2 order.

3 (b) Within 20 days of the issuance of the change order request,  
4 the contractor shall provide to the university, in writing, the price  
5 of the change, with supporting documentation.

6 (1) If the university agrees to the proposed price, it shall issue  
7 to the contractor a written change order within 10 days. The change  
8 order shall be incorporated into, and become part of, the best value  
9 contract.

10 (2) If the university does not agree to the proposed price, it may  
11 issue a written change order with an alternative price, with  
12 supporting documentation, within 10 days. If the parties cannot  
13 reach agreement upon the amount to be charged or credited, they  
14 shall proceed to arbitration as provided in this article.

15 (3) If the university fails to approve or reject the scope and  
16 pricing within 30 days after receipt thereof, there shall exist a  
17 rebuttable presumption that the university has approved the change  
18 order.

19 (c) If there is a dispute concerning whether work to be performed  
20 by the contractor is outside the scope of work required by the best  
21 value base contract, the contractor shall immediately notify the  
22 university, in writing, of its position, with supporting  
23 documentation. If the university rejects the contractor's claim for  
24 extra work, the university shall, within 20 days, provide a written  
25 response, with supporting documentation relating to defenses to  
26 the claim the university may have against the contractor. If the  
27 parties cannot resolve their dispute by negotiation, they shall  
28 proceed to arbitration as provided in this article.

29 (d) Payments to the contractor for extra work performed by the  
30 contractor shall be made as the extra work progresses concurrently  
31 with payments made under the payment schedule. The contractor  
32 may stop work if any payment, including payment for extra work,  
33 is not made to the contractor as provided in this article.

34 (e) Requests for extra work shall be made in writing, ~~but the~~  
35 ~~contractor is entitled to be paid for extra work whether or not the~~  
36 ~~requests are made in writing.~~

37 (f) Failure to adhere to the provisions of this article does not  
38 preclude recovery of compensation for work performed by the  
39 contractor based on quasi-contract, quantum meruit, restitution,  
40 or a similar remedy designed to prevent unjust enrichment.

SEC. 2. Section 10506.7.6 is added to the Public Contract Code, to read:

10506.7.6. The following procedures are established for all claims arising under best value contracts made under the provisions of this chapter.

(a) If the university fails to respond within the time prescribed for change orders, or if the contractor disputes the university's written response to a claim for extra work, or if the parties are otherwise unable to resolve any claim arising under a best value contract, the contractor may notify the university and demand an informal conference to settle the issues in controversy. Upon a demand by the contractor, the university shall schedule an informal conference within 30 days of the contractor's written demand for settlement of the issues in controversy.

(b) If any claim remains unresolved following the informal conference, or if the informal conference does not proceed within 30 days of the contractor's written demand, the contractor may immediately initiate arbitration proceedings. The contractor shall not be required to exhaust any administrative procedure or to pursue any contractual dispute resolution procedure contained in the best value contract, or otherwise, as a condition precedent to initiating arbitration.

~~(c) Where a subcontractor lacks legal standing to assert a claim directly against the university, due to a lack of privity of contract, the prime contractor may present a pass-through or representative claim on behalf of the subcontractor against the university.~~

~~(d)~~

(c) Unless otherwise agreed to by the parties, all of the following apply:

(1) For claims of less than fifty thousand dollars (\$50,000), the arbitration shall be conducted by a single arbitrator selected by the parties. If the parties cannot agree on the arbitrator, either party may petition the superior court to appoint an arbitrator.

(2) For claims in excess of fifty thousand dollars (\$50,000), the arbitration shall be conducted by a three-member arbitration panel composed of one representative chosen by each of the parties and one representative chosen jointly.

~~(e)~~

(d) Except as provided in this chapter, the procedure governing the arbitrations shall be as set forth in Title 9 (commencing with

1 Section 1280) of Part 3 of the Code of Civil Procedure. For claims  
2 in excess of fifty thousand dollars (\$50,000), the provisions of  
3 Section 1283.05 of the Code of Civil Procedure, except subdivision  
4 (e) thereof, apply to the conduct of discovery for any arbitration  
5 conducted pursuant to this section.

6 ~~(f)~~

7 (e) Unless the parties to the contract otherwise agree, the  
8 arbitration decision shall be decided under, and in accordance,  
9 with the laws of this state, shall be supported by substantial  
10 evidence, and shall set forth, in writing, the basis for the decision,  
11 findings of fact, and conclusions of law.

12 ~~(g)~~

13 (f) The cost of conducting the arbitration shall be borne equally  
14 by the parties, except that the arbitrator shall award to the  
15 prevailing party reasonable attorneys' fees and costs.

16 ~~(h)~~

17 (g) Interest may be recovered as part of the award as in a civil  
18 action. The arbitrator shall have the same authority as a court in  
19 awarding interest and the commencement of the arbitration is  
20 equivalent to the filing of an action under subdivision (b) of Section  
21 3287 of the Civil Code for the purpose of an award of interest.

22 ~~(i)~~

23 (h) A party may petition, within the applicable time periods and  
24 upon the grounds specified in this section and in Article 1  
25 (commencing with Section 1285) of Chapter 4 of Title 9 of Part  
26 3 of the Code of Civil Procedure, the court to confirm, correct, or  
27 vacate the award rendered by the arbitrator.

28 SEC. 3. Article 1.6 (commencing with Section 10507.1) is  
29 added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract  
30 Code, to read:

31  
32 Article 1.6. Approval of Contracts  
33

34 10507.1. (a) Notwithstanding any other provision of law, this  
35 article applies to all public works contracts awarded under this  
36 chapter by the Regents of the University of California to a  
37 contractor.

38 (b) For purposes of this article:

1 (1) "Claim" means a demand for monetary compensation or  
2 damages arising under or relating to the performance of a public  
3 works contract.

4 (2) "Contractor" means a contractor within the meaning of the  
5 provisions of Chapter 9 (commencing with Section 7000) of  
6 Division 3 of the Business and Professions Code.

7 (3) "Prime contractor" means the contractor who contracts  
8 directly with the Regents of the University of California.

9 (4) "Subcontractor" means a contractor who contracts directly  
10 with the prime contractor.

11 (5) "Public works contract" means a public works contract as  
12 defined under Section 1101.

13 (6) "University" means the Regents of the University of  
14 California.

15 (c) The provisions of this article, or a summary thereof, shall  
16 be set forth in the plans or specifications for any public works that  
17 may give rise to a claim under this article.

18 (d) This article applies only to contracts entered into on or after  
19 January 1, 2008.

20 10507.2. (a) The university may, without affecting the validity  
21 of the public works contract, order changes, modifications,  
22 deletions, and extra work pursuant to a written proposed change  
23 order.

24 (b) Within 20 days of the issuance of the change order request,  
25 the contractor shall provide to the university, in writing, the price  
26 of the change, with supporting documentation.

27 (1) If the university agrees to the proposed price, it shall issue  
28 to the contractor a written change order within 10 days. The change  
29 order shall be incorporated into, and become part of, the public  
30 works contract.

31 (2) If the university does not agree to the proposed price, it may  
32 issue a written change order with an alternative price, with  
33 supporting documentation, within 10 days. If the parties cannot  
34 reach agreement upon the amount to be charged or credited, they  
35 shall proceed to arbitration as provided in this article.

36 (3) If the university fails to approve or reject the scope and  
37 pricing within 30 days after receipt thereof, there shall exist a  
38 rebuttable presumption that the university has approved the change  
39 order.

1 (c) If there is a dispute concerning whether work to be performed  
2 by the contractor is outside the scope of work required by the  
3 public works base contract, the contractor shall immediately notify  
4 the university, in writing, of its position, with supporting  
5 documentation. If the university rejects the contractor's claim for  
6 extra work, the university shall, within 20 days, provide a written  
7 response, with supporting documentation relating to defenses to  
8 the claim the university may have against the contractor. If the  
9 parties cannot resolve their dispute by negotiation, they shall  
10 proceed to arbitration as provided in this article.

11 (d) Payments to the contractor for extra work performed by the  
12 contractor shall be made as the extra work progresses concurrently  
13 with payments made under the payment schedule. The contractor  
14 may stop work if any payment, including payment for extra work,  
15 is not made to the contractor as provided in this article.

16 (e) Requests for extra work shall be made in writing, ~~but the~~  
17 ~~contractor is entitled to be paid for extra work whether or not the~~  
18 ~~requests are made in writing.~~

19 (f) Failure to adhere to the provisions of this article does not  
20 preclude recovery of compensation for work performed by the  
21 contractor based on quasi-contract, quantum meruit, restitution,  
22 or a similar remedy designed to prevent unjust enrichment.

23 10507.3. The following procedures are established for all claims  
24 arising under public works contracts made under the provisions  
25 of this chapter.

26 (a) If the university fails to respond within the time prescribed  
27 for change orders, or if the contractor disputes the university's  
28 written response to a claim for extra work, or if the parties are  
29 otherwise unable to resolve any claim arising under a public works  
30 contract, the contractor may notify the university and demand an  
31 informal conference to settle the issues in controversy. Upon a  
32 demand by the contractor, the university shall schedule an informal  
33 conference within 30 days of the contractor's written demand for  
34 settlement of the issues in controversy.

35 (b) If any claim remains unresolved following the informal  
36 conference, or if the informal conference does not proceed within  
37 30 days of the contractor's written demand, the contractor may  
38 immediately initiate arbitration proceedings. The contractor shall  
39 not be required to exhaust any administrative procedure or to  
40 pursue any contractual dispute resolution procedure contained in

1 the public works contract, or otherwise, as a condition precedent  
2 to initiating arbitration.

3 ~~(e) Where a subcontractor lacks legal standing to assert a claim~~  
4 ~~directly against the university, due to a lack of privity of contract,~~  
5 ~~the prime contractor may present a pass-through or representative~~  
6 ~~claim on behalf of the subcontractor against the university.~~

7 ~~(d)~~

8 (c) Unless otherwise agreed to by the parties, all of the following  
9 apply:

10 (1) For claims of less than fifty thousand dollars (\$50,000), the  
11 arbitration shall be conducted by a single arbitrator selected by the  
12 parties. If the parties cannot agree on the arbitrator, either party  
13 may petition the superior court to appoint an arbitrator.

14 (2) For claims in excess of fifty thousand dollars (\$50,000), the  
15 arbitration shall be conducted by a three-member arbitration panel  
16 composed of one representative chosen by each of the parties and  
17 one representative chosen jointly.

18 ~~(e)~~

19 (d) Except as provided in this chapter, the procedure governing  
20 the arbitrations shall be as set forth in Title 9 (commencing with  
21 Section 1280) of Part 3 of the Code of Civil Procedure. For claims  
22 in excess of fifty thousand dollars (\$50,000), the provisions of  
23 Section 1283.05 of the Code of Civil Procedure, except subdivision  
24 (e) thereof, apply to the conduct of discovery for any arbitration  
25 conducted pursuant to this section.

26 ~~(f)~~

27 (e) Unless the parties to the contract otherwise agree, the  
28 arbitration decision shall be decided under, and in accordance with,  
29 the laws of this state, shall be supported by substantial evidence,  
30 and shall set forth, in writing, the basis for the decision, findings  
31 of fact, and conclusions of law.

32 ~~(g)~~

33 (f) The cost of conducting the arbitration shall be borne equally  
34 by the parties, except that the arbitrator shall award to the  
35 prevailing party reasonable attorneys' fees and costs.

36 ~~(h)~~

37 (g) Interest may be recovered as part of the award as in a civil  
38 action. The arbitrator shall have the same authority as a court in  
39 awarding interest and the commencement of the arbitration is

1 equivalent to the filing of an action under subdivision (b) of Section  
2 3287 of the Civil Code for the purpose of an award of interest.  
3 (i)  
4 (h) A party may petition, within the applicable time periods and  
5 upon the grounds specified in this section and in Article 1  
6 (commencing with Section 1285) of Chapter 4 of Title 9 of Part  
7 3 of the Code of Civil Procedure, the court to confirm, correct, or  
8 vacate the award rendered by the arbitrator.

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